IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 16101 of 2004

Between:

Manyam Panasayya, S/o Rama Rao,
D.No.2-6-58/1, Near Saritha Complex, Perrajupeta, Kakinada-3

..... PETITIONER

AND

1 Government of Andhra Pradesh, rep.by its Principal Secretary,
Port Department, Hyderabad
2 The Executive Engineer, Mechanical & Dredging Division,
Port Department, Kakinada
3 The District Collector, East Godavari District, Kakinada

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Writ, Order or direction, declaring the Tender-cum Public Auction Notice No.7/DM.2/M&D/2003-04 (Second Cell) and its further proceedings i.e. auction are null and void and quash the same declaring it as illegal, arbitrary and against the principles of natural justice and against the rights guaranteed under Constitution of India for right to conduct business.

Counsel for the Petitioner:MRS.D.GEETHA

Counsel for the Respondents: GP FOR TRANSPORT

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.16101 OF 2004

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ORDER :

This writ petition is filed seeking a declaration that the tender-cum-public auction notice dated 05-08-2004 issued by the second respondent is arbitrary and illegal.

The facts in brief are as follows:

The 2nd respondent – Executive Engineer, Mechanical and Dredging Division, Port Department, Kakinanda, issued Tender-cum-Public Auction Notice dated 30-01-2004 inviting sealed tenders for the disposal of unserviceable machinery and materials specified thereunder on as is where is condition available at Port Mechanical Stores, Kakinada Port. The petitioner who submitted his tender for four items claims that he was declared as a successful bidder in respect of all the said items. It is also claimed that he paid the necessary amounts, but the second respondent instead of completing the remaining formalities, cancelled the tenders.

The petitioner got issued a legal notice dated 29-04-2004 under Section 80 of C.P.C. calling upon the second respondent to reconsider the issue and to grant the tender in favour of the petitioner, failing which the necessary steps will be taken for redressal. The 2nd respondent issued a reply notice dated 15-05-2004 denying the fact that the petitioner was declared as the successful tenderer and stating that in view of the reports received with regard to the formation of Cartel among the tenderers it has been decided to cancel the tender dated 30-01-2004. Thereafter, a fresh tender notice (2nd call) has been issued by the 2nd respondent on 05-08-2004 inviting tenders for the same material and proposing to conduct the auction on 09-09-2004. Challenging the same, this writ petition has been filed on 08-09-2004 contending that the second respondent is not entitled to issue the fresh tender notice without finalising the tenders invited under the tender notice dated 20-09-2004.

The 2nd respondent filed a counter-affidavit stating that it is a fact that in pursuance of the tender notice dated 30-01-2004 the petitioner participated and filed his tenders in respect of four items. However, the contention of the petitioner that he was declared as the successful bidder and paid the amounts has been specifically denied and stated that except the payment of earnest money deposit along with other participants he has not made any other payment. Subsequently, the 2nd respondent received certain complaints that the amounts offered by the bidders / auctioneers against each item are very low and the bids are not competitive due to collusion between the bidders / auctioneers. Based on the said complaints, the 2nd respondent decided to cancel all the bids received in response to the first Tender-cum-Public Auction Notice in the public interest so as to protect the Government Exchequer. Accordingly, invoking Clause-20 of the terms and conditions of the Tender Schedule, the Tender-cum-Public Auction Notice dated 30-01-2004 was cancelled and the said fact was informed to the petitioner duly returning the earnest money deposit paid by him vide letter dated 07-04-2004. In response, the petitioner issued a legal notice on 29-04-2004 requesting to reconsider the issue and to accept the tender in favour of the petitioner. A reply notice was issued by the 2nd respondent on 15-05-2004. Thereafter, a fresh tender notice dated 05-08-2004 has been issued and in pursuance thereof public auction was conducted on 09-08-2004 and in respect of the four items in question, higher offers than what was quoted by

the petitioner in the first call, have been received. Hence, the writ petition is misconceived and liable to be dismissed.

I have heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents.

The learned Counsel for the petitioner vehemently contended that since the petitioner was declared as the highest bidder, the contract was already concluded in his favour and therefore it is not open to the second respondent to cancel the tenders invoking Clause-20 of the Terms and Conditions. It is also contended that the cancellation of tenders on the ground that there was no competition among the bidders in the first call is not justified since there is absolutely no material to substantiate the alleged formation of Cartel among the tenderers. Thus, according to the learned Counsel, the entire action of the respondents in issuing the second Tender Notice is arbitrary and illegal.

On the other hand, the learned Government Pleader contends that the petitioner was never declared as the successful bidder and even assuming that he was the highest bidder, the same does not confer any right on him to claim that his tender should be accepted. He submits that having regard to the facts and circumstances of the case, the second respondent has rightly cancelled the tenders under the Tender Notice dated 30-01-2004 and that the writ petition filed at a belated stage is not bona fide and liable to be dismissed in limini.

The learned Government Pleader has also produced the relevant Record relating to the tender notice dated 30-01-2004. On the basis of the material on record, it is to be noted that Notice dated 30-01-2004, was issued under tender-cum-auction process under which the sealed tenders received will be opened after the closure of the open auction for all the items and the highest offer either in the tender or auction will be accepted. It is also relevant to note that immediately after closure of the auction and opening of the sealed tenders, the names of the tenderers / bidders who offered the highest amount for each item will be announced and such highest bidder should pay 25% of the bid amount in the shape of the demand draft / pay order drawn in favour of the second respondent within three days, failing which the earnest money deposit

furnished will be forfeited. It is also relevant to note that a letter of acceptance will be issued on receipt of 25% payment and the balance of 75% together with the statutory taxes / duties has to be paid within seven days from the date of receipt of letter of acceptance. On receipt of full payment and the taxes, release orders will be issued and thereafter the material shall be lifted within the time specified in the release order. That apart, under Clause-20 of the Terms and Conditions, the 2nd respondent reserves the right to reject / cancel any or all of the tenders / bids without assigning any reason. The same clause has been reiterated in the tender-cum-auction notice dated 30-01-2004 stating that the 2nd respondent reserves the right to reject any or all of the tenders or drop the proposal of receiving tenders or conducting public auction at any time without assigning any reasons therefor.

The law is well settled that a person inviting tenders is under no legal obligation to accept the tender even if it is the highest or lowest and that a contract will conclude only when the tender is accepted and an order is placed. Even the communication of acceptance of the tender will not result in the completion of the contract when the clauses of the tender notice require such acceptance to be followed by an agreement or work order.

As noted above, under the Terms and Conditions of the tender notice in question, the highest bidder has to deposit 25% of the bid amount within three days and thereafter the letter of acceptance has to be issued. The highest bidder is also required to deposit 75% of the payment on receipt of letter of acceptance and only thereafter the release order will be issued. Thus, the contract between the parties will be concluded only at that stage. In the light of the said specific clauses, even assuming that the petitioner was declared as the highest bidder, it cannot be said that the contract was concluded in his favour. As a matter of fact, the case of the second respondent was that after opening the tender box in the presence of all the bidders / auctioneers who have participated, a comparative statement was prepared so as to arrive at the highest value quoted against each item and that the petitioner was not declared as the successful bidder. At any rate, even according to the petitioner, the letter of acceptance was not issued in his favour and nothing has been placed before this Court to show that the petitioner has deposited the 25% of

the bid amount. In the circumstances, I do not find any merit in the contention of the petitioner that there was a concluded contract and therefore it is not open to the 2nd respondent to cancel the tender.

It is also a well settled principle of law that where the terms and conditions of the tender empower the Tender Inviting Authority to cancel the tender without assigning any reason whatsoever, no right will accrue to the tenderer unless and until the tender is accepted. It is not in dispute that the 2nd respondent is conferred with such power under the terms and conditions. The reason for which the tender was cancelled also cannot be said to be not valid or without justification since it is the specific case of the 2nd respondent that a Cartel was formed among the tenderers due to which the bids received were found to be not competitive. Cancellation of tender on such a ground is undoubtedly in public interest. Particularly in the absence of any specific allegation of mala fides, I do not see any justifiable reason to hold the action of the 2nd respondent is arbitrary or illegal. It is also relevant to note that the fact that the tender was cancelled was informed to the petitioner on 07-04-2004 itself and the earnest money deposit was returned. The present writ petition filed on 08-09-2004 after the 2nd tender notice has been issued is misconceived and appears to be not bona fide.

For the aforesaid reasons, the Writ Petition is devoid of any merit and is accordingly dismissed. No costs.

Needless to mention that the interim order granted on 09-09-2004 shall stand vacated.

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11th October, 2004.

Note:- CC by tomorrow.

(B/O) gbs

To

1 The Principal Secretary, Government of Andhra Pradesh, Port Department, Hyderabad
2 The Executive Engineer, Mechanical & Dredging Division,
Port Department, Kakinada
3 The District Collector, East Godavari District, Kakinada

4. Two Ccs to G.P. for Transport, High Court of AP Bldgs, Hyderabad (OUT).

5. 2 CD copies.